

AUSTRALASIAN PLANT PATHOLOGY SOCIETY

SUBMISSION ON NEW BIOSECURITY LEGISLATION

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The Australasian Plant Pathology Society supports the proposed Biosecurity Bill noting that there are:

- Significant changes in the burden of proof and liability that will facilitate compliance action
- Improvements in arrangements for managing risks that have been identified post-border
- Explicit inclusion of environmental protection and invasive pests

The following comments address a number of issues that the Senate Committee may wish to consider.

Incorporating a statement on ALOP into the legislation is not a good idea.

Based on the following reasons it does not seem to be a good idea to imbed a statement on ALOP into the legislation:

1. The concept of ALOP is based on a trade agreement - the SPS Agreement of the WTO. Despite many attempts international guidance on the definition and application of this term has not been forthcoming. It is not appropriate to use a specific term from an international trade agreement in Australian biosecurity legislation. The biosecurity legislation is about protection of plant, animal, human health and the environment in Australia. While it should be consistent with our international obligations it should not seek to harmonise our biosecurity terminology with a specific international trade agreement. As highlighted in the explanatory documentation the new biosecurity legislation will interact with a whole range of international agreements including, the IPPC, OIE, the CBD, and maritime and human health agreements that are not primarily trade agreements and don't necessarily subscribe to the WTO terminology or approach to protection. The legislation should endeavour to minimise impact on trade as much as possible but trade is not the primary focus and therefore it should not be tied to specific international trade terminology.
2. The proposed statement on ALOP is the same that is already promulgated under administrative action by DAFF. However, many stakeholders both in industry and in the broader community consider it is non-transparent, confusing and subject to arbitrary application by administrative practice. This issue has been extensively considered in major reviews of quarantine and recommendations made to provide much greater clarity on Australia's policy on biosecurity protection. It is difficult to see how

imbedding the term ALOP in legislation along with its current (unclarified definition) will provide importers and trading partners with “additional certainty of the standard that is being applied” and “increase transparency in its application when assessing biosecurity risks” as stated on page 3 of the explanatory memorandum. In addition the inclusion of a specific trade term in the legislation will tend to reinforce industry and community views that the focus is on trade rather than biosecurity.

3. The new legislation that would be expected to have a lifetime of upwards of 50 years. It does not seem wise to imbed a contentious term that is still under discussion this legislation. An alternative approach would be for the legislation to require the Government to release a policy on Australia’s biosecurity protection level. This would make it clear that it is the Government’s policy that the Director of Biosecurity is implementing – not a policy developed by the administrative system within a government department. This would also provide more flexibility to amend the statement on protection as the approach to biosecurity changed in the future.

The risks of a risk based approach

A risk based approach where the actions taken to manage risks are closely related to the specific circumstances rather than based on a standard procedures is proposed. This is consistent with Australia’s international obligations and has the potential to result in better biosecurity outcomes. However, there are significant risks associated with this approach:

1. Need for staff with sufficient biological training and skills to assess risks and implement risk management measures.

Over the last 20 years or so the skills required of frontline quarantine officers has changed significantly. Twenty years ago officers had a good understanding of pest/disease biology with the ability to apply sound biological reasoning to risk situations. Currently, many officers have little biological training - their major responsibilities relate to checking that importers/passengers etc. are following pre-set standard rules and procedures. They do not have the training to make risk based decisions in their day to day activities. The move to a risk based approach will require a very significant investment in training of officers involved in biosecurity activities.

2. Flexibility may increase complexity

A significant focus of the legislation is to provide increased flexibility for industry to develop arrangements for managing biosecurity risks that meet their business needs. The Regulation Impact Study suggests that there are around 1000 large importers and perhaps up to 100 of these may wish to have an approved arrangement specifically related to the way they do business. Under the proposed approach a modest number of standard arrangements will be replaced by a larger number of different arrangements all requiring a different approach to audit and oversight. Managing a diverse range of arrangements and ensuring that staff with

responsibilities to assess, audit and supervise these arrangements are performing to the required standard is likely to be much more challenging than implementing a smaller number of standard procedures.

3. Increased need for biosecurity import risk analyses

The current practice for a risk analysis of an imported commodity is to assess the risks then choose a set of standard risk management measures that will adequately manage the risk. A move to a system that allows for more flexibility may result in a significant increase in workload for biosecurity import risk analyses particularly in assessing the ability of different commercial arrangements to adequately manage the risks from the production areas to the import chain to the distribution and use in Australia. For example, this may require much greater contact with the commercial processing/packing facilities in this country if importers are seeking to rely on action taken in the exporting country as a component of risk management.

4. Lack of senior staff with technical skills in plant health and risk analysis

In recent years there has been a very significant loss of senior plant health staff in DAFF. The current situation is that there is only one substantive SES level officer that has the technical background and breadth of experience to properly manage the proposed risk based approach to plant biosecurity. This situation may have been acceptable under the existing rules based system but a flexible risk based approach will not work unless there are excellent technical skills in plant biosecurity at all levels from frontline inspectorial staff through to SES decision makers.

The devil is in the detail

The existing Quarantine Act has supporting regulations and schedules that will need to be reviewed and updated when the new legislation comes into force. The ability to deliver good biosecurity outcomes is critically dependent on this subordinate legislation. The proposed legislation provides appears to provide a good framework for managing biosecurity. However, without access to the supporting regulations and any guidance on how the legislation will be interpreted by the Director of Biosecurity it is difficult to judge if the proposed legislation will result in better, or at least no worse, biosecurity outcomes for Australia.